129-366

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 1443.

JOHN H. HARRIS, PLAINTIFF IN ERROR,

vs.

AMAZIAH D. BARBER.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED NOVEMBER 23, 1888.

rules and regulations in force in the country where he places it. *What the law protects, it has a right to regulate.*"

Olivier vs. Townes, 2 Mart. N. S. 98.

This Court, in Harvey vs. Locomotive Works, (93 U. S. 671), almost repeats the language used by Judge Porter, in Olivier vs. Townes.

It seems to me that the case of Butt vs. Ellet, (19 Wall. 344), has no influence on the present controversy, for the reasons stated in the brief of my associate, and for the further reason that the question here discussed was not presented or considered in this case.

Respectfully submitted,

THOS. J. SEMMES,

Of Counsel for Appellees.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, NOVEMBER 24, 1888.

1 *Petition for Writ of Certiorari, &c. Filed Dec.* 19, 1887.

In the Supreme Court of the District of Columbia.

AMAZIAH D. BARBER
vs.
JOHN H. HARRIS. } Law. No. 28321.

To the supreme court of the District of Columbia:

The petition of John H. Harris respectfully shows that he is in possession of the house and premises known as the "Harris House," No-. 1327–1329 E street northwest, in the city of Washington, in the District of Columbia, under a lease to him from Mary A. Matteson, dated May 3, 1883, and modified April 20, 1885, for a term ending October 1, 1889, at a rent of $3,000 per annum, with the privilege of extension for a further term of four years at a rent of $4,000 per annum; that under the terms of said lease he expended about $15,000 in permanent improvements and betterments to said building, put it in tenantable condition, and paid the taxes as-

2 sessed thereon until the sale hereinafter mentioned, besides expending upwards of $20,000 in furniture and appliances for its use as a hotel; that he did this upon the faith and expectation of enjoying his full term as tenant of said premises; that on May 4, 1886, the said land and premises was sold under a deed of trust prior in date to the lease of your petitioner, and of which your petitioner was in actual ignorance at the time of said lease, and was purchased by one Amaziah D. Barber, who, a few days after said sale, notified your petitioner to quit said premises, and on July 31, 1886, instituted a proceeding under the act of Congress regulating proceedings in cases between landlord and tenant in the District of Cobia, before William Helmick, justice of the peace for said District of Columbia, and on August 14, 1886, said justice of the peace rendered judgment against your petitioner for the possession of said premises, and said cause is No. — on the docket of said justice.

And your petitioner says that the said proceedings are void as being had and taken before and by said justice of the peace

3 Helmick without jurisdiction in this, that a written complaint under oath was not made to or before said justice of the peace, as is required by law; that said Barber did not appear before said justice of the peace to make such complaint, but made an affidavit before a notary public in the city of Utica, State of New York, and upon said affidavit said justice of the peace assumed to act and caused a summons to be issued and served upon your petitioner and proceeded to render judgment as aforesaid; and, further, in this, that the relation of landlord and tenant did not exist between said Barber and your petitioner by convention, and said Barber relying upon the absence of such relation for his right to possession, his only remedy was by an action of ejectment.

Wherefore your petitioner prays that the writ of certiorari may issue directed to said justice of the peace, William Helmick, com-

manding him to certify and send up to this court all the papers and proceedings in said cause.

JOHN H. HARRIS.

4 Subscribed and sworn to before me this 22d day of November, 1887.

A. JOHNS,
U. S. Commissioner, D. C.

Let the writ issue as prayed.

W. S. COX, *J.*

Writ of Certiorari. Issued Dec. 19, 1887.

In the Supreme Court of the District of Columbia, the 19 Day of December, 1887.

AMAZIAH D. BARBER
vs.
JOHN H. HARRIS. } At Law. No. 28321.

Certiorari.

The President of the United States to Wm. Helmick, justice of the peace, Greeting:

For sufficient reasons shown by the petition in this case you are hereby commanded to certify and send to this court immediately your proceedings therein, with all things touching the same, as fully and entirely as it remains before you, by whatsoever names
5 the parties may be called in said proceedings, together with this writ, that said court may cause to be done what of right ought to be done in the premises.

Witness E. F. Bingham, chief justice.

[SEAL.]

R. J. MEIGS, *Clerk*,
By J. R. YOUNG,
Assistant Clerk.

Marshal's Return.

Served Wm. Helmick, justice of the peace, December 19, 1887.
A. A. WILSON, *Marshal.*

Complaint of Landlord Against Tenant, &c. Filed December 21, 1887.

To William Helmick, justice of the peace for the District of Columbia:

Your complainant, Amaziah D. Barber, respectfully represents that he is entitled to the possession of the tenement and
6 premises known as the "Harris House," situate on lot five (5), in square No. 254, in the city of Washington, District of Columbia, and that the same is detained from him and held without right by John H. Harris, tenant thereof, by sufferance of this

complainant, and whose tenancy and estate therein has been determined by the service of a due notice to quit, of thirty days, in writing.

Complainant therefore prays that a summons may be issued to a proper officer of said District, to be served upon the said tenant holding over as aforesaid, commanding said tenant to appear before you, on a day to be therein named, to show cause why judgment in favor of your complainant for the possession of said tenement and premises and costs accruing upon this application should not be rendered herein agreeably to the act of Congress in such cases made and provided.

A. D. BARBER,
Complainant.

Subscribed and sworn to before me this 29th day of July, A. D. 1886.

[SEAL.] J. R. THOMAS,
Notary Public, Oneida County, N. Y.

7 STATE OF NEW YORK, } *ss:*
Oneida County, }

CLERK'S OFFICE.

I, M. Jesse Brayton, clerk of said county and of the supreme and county courts therein, the same being courts of record, do hereby certify that G. R. Thomas, whose name is subscribed to the certificate to the proof or acknowledgment of the annexed instrument and thereon written, was, at the time of taking such proof or acknowledgment, a notary public for said county, dwelling in said county, and sworn and duly authorized to take the same; and, further, that I am well acquainted with his handwriting, and verily believe that the signature to the certificate of said proof or acknowledgment is genuine; and, further, that said instrument is executed and acknowledged according to the laws of the State of New York.

In testimony whereof I have hereunto set my hand and affixed the seal of said county and court, at the city of Utica, this 29th day of July, 1886.

[SEAL.] M. J. BRAYTON, *Clerk.*

8 *Summons.*

DISTRICT OF COLUMBIA, *ss:*

The President of the United States to C. D. Caywood or any qualified constable in and for the District aforesaid, Greeting:

Whereas Amaziah D. Barber has made to me the foregoing and annexed written complaint on oath, representing that he is entitled to the possession of the tenement and premises in the said complaint described, and that the same is detained from him and held without right by John H. Harris, defendant herein, after defendant's tenancy and estate therein had been determined, as in the said complaint set forth:

You are, therefore, commanded to summon the said defendant to appear before me, the subscriber, on the 9th day of August, A. D. 1886, at 3 o'clock p. m., at my office, No. 916 F street N. W., in the city of Washington, D. C., to answer the said complaint hereto annexed, and show cause, if any, why judgment should not be rendered for complainant for the possession of the said tenement and
9 premises and costs of suit.

Witness my hand and seal this 31 day of July, A. D. 1886.

WM. HELMICK, *J. P.* [SEAL.]

Summoned as within directed.
July 31, '86.

C. B. CAYWOOD, *Constable.*

AUGUST 14, 1886.

Judgment for the pl'ff for the possession of the premises and costs.

WM. HELMICK, *J. P.* [SEAL.]

Non-Resident's Bond. Filed Dec. 21, 1887.

DISTRICT OF COLUMBIA, *ss:*

Know all men by these presents that we, Amaziah D. Barber and Job Barnard, are held and firmly bound unto John H. Harris, of Washington, D. C., in the sum of fifty dollars; to the payment
10 of which, well and truly to be made to said John H. Harris, his executors and administrators, we hereby bind ourselves, our executors and administrators, firmly by these presents.

Sealed with our seal and dated the 29th day of July, A. D. 1886.

Now, the conditions of the above obligation are such that — the above-bounden Amaziah D. Barber and Job Barnard shall pay and satisfy all costs adjudged against said Amaziah D. Barber in an action proposed to be brought by him against said John H. Harris, before Justice Helmick, in said District, then this obligation to be void and of no effect; otherwise to be and remain in full force and virtue in law.

A. D. BARBER. [SEAL.]
JOB BARNARD. [SEAL.]

Signed and acknowledged in the presence of (as to A. D. Barber)—
G. R. THOMAS,
Notary Public, Oneida Co.

11 STATE OF NEW YORK, } *ss:*
Oneida County, }

CLERK'S OFFICE.

I, M. Jesse Brayton, clerk of said county and of the supreme and county courts therein, the same being courts of record, do hereby certify that G. R. Thomas, whose name is subscribed to the certificate to the proof or acknowledgment of the annexed instrument

and thereon written, was, at the time of taking such proof or acknowledgment, a notary public for said county, dwelling in said county, and sworn and duly authorized to take the same; and, further, that I am well acquainted with his handwriting, and verily believe that the signature to the certificate of said proof or acknowledgment is genuine; and, further, that said instrument is executed and acknowledged according to the laws of the State of New York.

In testimony whereof I have hereunto set my hand and affixed the seal of said county and courts, at the city of Utica, this 29th day of July, 1886.

[SEAL.] M. J. BRAYTON, *Clerk.*

12 *Return to a Writ of Certiorari. Filed Dec.* 21, 1887.

In Justice's Court of the District of Columbia, Wm. Helmick, a Justice of the Peace.

AMAZIAH D. BARBER, Plaintiff,
vs.
JOHN H. HARRIS, Defendant. } No. 14250.

Action for possession of Harris House, on lot 5, square 254.

Date.	Proceedings.
1886.	
July 31	Non-resident's bond filed and summons issued to Constable C. B. Caywood, returnable Aug. 9 at 3 p. m. Aug. 9, cont. to Aug. 12 at 3.30 p. m.
Aug. 12	Parties present, trial commenced, J. S. Stofferd sum'd (sworn) for pl'ff, and at def't's request continued to Aug. 14 at 3.30 p. m.
Aug. 14	Judgment for the plaintiff for the possession of the premises and costs, $2.80.
1886.	
Nov. 22	Writ of restitution to Constable Stohl.

When I received the annexed writ of certiorari, whereby the proceedings before me in said suit were stopped.

WM. HELMICK, *J. P.* [SEAL.]

13 DISTRICT OF COLUMBIA, *County of Washington,* } *ss:*

I, Wm. Helmick, one of the justices of the peace in and for said county and District, by virtue of the annexed writ to me delivered, do hereby certify the record and proceedings in the suit in the writ mentioned unto the supreme court of the District of Columbia, together with all things touching the same, as fully and wholly as the same is now depending before me.

Given under my hand and seal this 20 day of December, A. D. 1887.

WM. HELMICK, *J. P.* [SEAL.]

Costs paid by plaintiff, $—; 50 cts. for this return.
Costs paid by defendant, $—.

Motion to Quash Writ of Certiorari. Filed Dec. 22, 1887.

In the Supreme Court of the District of Columbia.

AMAZIAH D. BARBER
v.
JOHN H. HARRIS. } At Law. No. 28321.

14 Now comes the plaintiff and moves the court to quash the writ of certiorari heretofore issued in this cause for the following reasons:

1. The said writ was improvidently granted.
2. The said defendant had his remedy by appeal from said judgment.
3. The said defendant is not entitled to said writ by reason of his own negligence and laches in the premises.
4. The said judgment has already been the subject of judicial examination and consideration in this court, in equity cause No. 10046, brought by said defendant to enjoin the execution of said judgment, and the said injunction has been denied by the decree of this court therein in both the special and general term-.
5. And for other reasons apparent on the record herein.

EDWARDS & BARNARD,
Att'ys for Plaintiff.

15 *Court Proceedings.*

Proceedings before the supreme court of the District of Columbia, holding a special term at law for the month of October, A. D. 1887, commencing the first Tuesday, it being the 4th day, of October.

TUESDAY, *October 4th, A. D.* 1887.

By order of Walter S. Cox, justice, one of the justices of said supreme court, presiding, the court is opened for the dispatch of business by proclamation of the marshal pursuant to rule of court.

* * * * * * *

THURSDAY, *December 29th, A. D.* 1887.

Session resumed pursuant to adjournment, Cox, justice, presiding.

* * * * * * *

16 AMAZIAH D. BARBER, Pl't'ff,
vs.
JOHN H. HARRIS, Def't. } At Law. No. 28321.

This cause coming on to be heard upon the plaintiff's motion to

quash the writ of certiorari issued in this case, and the same having been heard, it is considered that said writ of certiorari be, and the same is hereby, quashed and for nothing held at the costs of the defendant, to be taxed by the clerk; and the court orders the clerk to return the papers to the justice of the peace from whence they came, to proceed thereon according to law; from which the defendant appeals.

FRIDAY, *December 30th, A. D.* 1887.

Session resumed pursuant to adjournment, Cox, justice, presiding.

* * * * * * *

AMAZIAH D. BARBER, Pl't'ff,
vs.
JOHN H. HARRIS, Def't. } At Law. No. 28321.

17 On motion of defendant, by his attorney, Mr. Bradley, the court fixes the amount of the undertaking, to operate as a supersedeas, at the sum of two thousand dollars.

Appeal Bond to General Term. Filed Jan. 3, 1888.

In the Supreme Court of the District of Columbia, the — Day of ——, 188–.

AMAZIAH D. BARBER
vs.
JOHN H. HARRIS. } At Law. No. 28321.

Know all men by these presents that we, John H. Harris and Washington B. Williams, are bound unto the above-named Amaziah D. Barber in the sum of two thousand dollars, to be paid to the said Amaziah D. Barber, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

18 Sealed with our seals and dated this third day of January 1888.

Whereas the above-named John H. Harris has prosecuted an appeal to the general term to reverse the judgment rendered in the above suit by the supreme court of the District of Columbia, holding a circuit court:

Now, therefore, the condition of this obligation is that if the above-named John H. Harris shall prosecute his said appeal to effect and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JOHN H. HARRIS. [SEAL.]
WASHINGTON B. WILLIAMS. [SEAL.]

Sealed and delivered in presence of—
A. C. BRADLEY.

Approved as to form & security.

W. S. COX, *J.*

19 *Motion to Assign for Hearing in General Term or for Further Bond. Filed June* 16, 1888.

In the Supreme Court of the District of Columbia.

AMAZIAH D. BARBER
vs.
JOHN H. HARRIS. } Law. No. 28321.

Now comes the plaintiff and moves the court to fix an early day for the hearing of this cause before the close of the present term, or, if that shall not be practicable, then to require the defendant to execute a further appeal bond in the premises, for the reason that the appeal bond heretofore given in this cause on January 3d, 1888, is only in the penalty of $2,000, and the damages to the plaintiff by reason of defendant's use and occup-tion of said premises from the date of said appeal bond until this cause can be heard at the next term of the court will be greatly in excess of the penalty of said bond.

Notice.

The above motion will be called up on Friday, June 22d,
20 1888, at 2 o'clock p. m., or so soon thereafter as the attention of the court can be procured.

EDWARDS & BARNARD,
Attorneys for Pl'ff.

To A. C. Bradley, Esq., attorney for defendant.

Service accepted June 16, 1888.

——— ———,
Att'y for Def't.

Order of Court in General Term Requiring Additional Bond for Defendant Harris. Filed July 2, 1888.

In the Supreme Court of the District of Columbia.

AMAZIAH D. BARBER
vs.
JOHN H. HARRIS. } Law. No. 28321.

On hearing the motion of plaintiff filed herein on the 16th day of June, 1888, and it appearing that the appeal cannot be heard at the present term of the court, and that the appeal bond heretofore filed herein by the defendant *it* is not sufficient in amount
21 to indemnify the plaintiff in the premises in case of an affirmance of the judgment appealed from at the next term of the court—

It is, this 2d day of July, 1888, ordered that the defendant give an additional bond herein in the penalty of two thousand dollars, with like conditions as the former bond and with surety or sureties

to be approved by this court or one of the justices on notice to the plaintiff, and that the same be filed within thirty days from this date.

E. F. BINGHAM,
Chief Justice.

Additional Bond. Filed July 18, 1888.

In the Supreme Court of the District of Columbia. In General Term, the — Day of ——, 188–.

AMAZIAH D. BARBER
vs.
JOHN H. HARRIS. } At Law. No. 28321.

22 Know all men by these presents that we, John H. Harris and Washington B. Williams, his surety, are bound unto the above-named Amaziah D. Barber in the sum of two thousand dollars, to be paid to the said Amaziah D. Barber, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 18th day of July, 1888.

Whereas the above-named John H. Harris has prosecuted an appeal to the general term to reverse the judgment rendered in the above suit by the said supreme court of the district of Columbia, holding a circuit court; and whereas the said court in general term, by order of July 2, 1888, has required the said defendant to give an additional bond herein in the penalty of two thousand dollars:

Now, therefore, the condition of this obligation is that if the above-named John H. Harris shall prosecute his said appeal to effect
23 and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JOHN H. HARRIS. [SEAL.]
WASHINGTON B. WILLIAMS. [SEAL.]

Sealed and delivered in presence of—

—— ——.

Satisfactory.
EDWARDS & BARNARD, *for Pl'ff.*

Bond and sureties thereto approved this 18th day of July, 1888.
E. F. BINGHAM,
Chief Justice.

Proceedings in General Term.

Proceedings before the supreme court of the district of Columbia, sitting in general term, beginning first Monday, October 1, 1888.

MONDAY, *October* 1, 1888.

Present, presiding: Mr. Chief Justice E. F. Bingham & Justices Cox, James, Hagner, & Merrick.

* * * * * * *

24 WEDNESDAY, *Oct.* 31, 1888.

Session resumed pursuant to adjournment.
Present: Chief Justice Bingham & Justices James & Merrick.

* * * * * * *

AMAZIAH D. BARBER, Plaintiff,
vs.
JOHN H. HARRIS, Defendant. } At Law. No. 28321.

Argued by A. C. Bradley, for Harris, appellant, and by Mr. Barnard, for Barber, and submitted to the court.

* * * * * * *

TUESDAY, *November* 6, 1888.

Session resumed pursuant to adjournment.
Present: Mr. Chief Justice Bingham and Justices James & Merrick.

* * * * * * *

AMAZIAH D. BARBER
vs.
JOHN H. HARRIS. } Law. No. 28321.

25 This cause coming on for hearing on the defendant's appeal, being heard, argued, and submitted, it is, this 6th day of November, 1888, adjudged and ordered that the judgment of the circuit court herein quashing the said writ of certiorari and directing a return of the papers to the justice of the peace be, and the same is hereby, in all things affirmed, and that the defendant shall pay the costs of said appeal.

Writ of error prayed in open court and penalty of bond as supersedeas fixed at ten thousand dollars.

E. F. BINGHAM,
Chief Justice.

Bond for Writ of Error. Filed Nov. 12, 1888.

In the Supreme Court of the District of Columbia, the 12th Day of November, 1888.

JOHN H. HARRIS
vs.
AMIAZIAH D. BARBER. } At Law. No. 28321.

In error.

26 Know all men by these presents that we, John H. Harris and Washington B. Williams, his surety, are bound unto the above-named Amaziah D. Barber in the sum of ten thousand dollars, to be paid to the said Amaziah D. Barber, his executors or administrators; to which payment, well and truly to be made, we bind our-

selves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 12th day of November, 1888.

Whereas the above-named John H. Harris has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of the above obligation is that if the above-named John H. Harris shall prosecute his writ of error to effect and answer all damages and costs if he shall fail to
27 make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JOHN H. HARRIS. [SEAL.]
WASHINGTON B. WILLIAMS. [SEAL.]

Sealed and delivered in presence of—
SAM. MADDOX.

Approved.

E. F. BINGHAM,
Chief Justice.

28 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the chief justice and justices of the supreme court of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you, between Amaziah D. Barber and John H. Harris, being No. 28321, at law, a manifest error hath happened, to the great damage of the said John H. Harris, as by his complaint appears, and it being fit that the error, if any hath happened, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, therefore you are hereby commanded, if judgment be therein given, under your seal, distinctly and openly, to send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 12th day of November, in the year of our Lord 1888, and of the Independence of the United States the one hundred and thirteenth.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk.*

DISTRICT OF COLUMBIA, *To wit:*

To Amaziah D. Barber:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the District of Columbia, wherein John H. Harris is plaintiff and you are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected so that speedy justice be done the parties in that behalf.

Witness E. F. Bingham, chief justice of the said supreme court of the District of Columbia, this 12th day of November, 1888.

E. F. BINGHAM,
Chief Justice.

NOVEMBER 15TH, 1888.

Service acknowledged.

EDWARDS & BARNARD,
Att'ys for Def't in Error.

29 AUTHENTICATION OF RECORD.

Clerk's Certificate.

CLERK'S OFFICE,
SUPREME COURT OF THE DISTRICT OF COLUMBIA.

I, Return J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 19th day of November, 1888.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk,*
By J. R. YOUNG,
Assistant Clerk.

Justice's Certificate.

I, E. F. Bingham, chief justice of said court, do certify the foregoing attestation by Return J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 19 day of November, 1888.

E. F. BINGHAM, [SEAL.]
Chief Justice.

Clerk's Certificate to Justice's Official Character.

I, Return J. Meigs, clerk of said court, hereby certify that E. F. Bingham, whose genuine signature is subscribed to the foregoing

certificate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 19th day of November, 1888.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk*,
By J. R. YOUNG,
Assistant Clerk.

[Endorsed:] Authentication of record.

Endorsed on cover: District of Columbia supreme court. No. 1443. John H. Harris, plaintiff in error, *vs.* Amaziah D. Barber, Filed November 23, 1888.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1888.

JOHN H. HARRIS, Plaintiff in Error,

vs.

AMAZIAH D. BARBER, Defendant in Error.

No. 1,443.

BRIEF

FOR PLAINTIFF IN ERROR ON MOTION TO DISMISS.

A. C. BRADLEY,
Counsel for Plaintiff in Error.

LAW REPORTER PRINT, 503 E ST.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1888.

JOHN H. HARRIS, *Plaintiff in Error,*
vs.
AMAZIAH D. BARBER, *Defendant in Error.* } No. 1,443.

BRIEF

For Plaintiff in Error on Motion to Dismiss.

The cause below originated in the Supreme Court of the District of Columbia. A writ of *certiorari* was sued out by the plaintiff in error, directed to a justice of the peace, for the purpose of inquiring into the validity of a judgment rendered by him against the plaintiff in error in favor of the defendant in error, it being alleged that such judgment was void for want of jurisdiction.

The writ was duly issued and served, and the record was returned, and thereupon the defendant in error moved to quash the writ upon several grounds. The cause was heard upon this motion in Special Term, and the Court render judgment quashing the writ with costs. From this judgment an appeal was taken to the General Term of said Court, which affirmed the judgment of the Special Term with costs, and this writ of error is prosecuted upon that judgment.

The motion is made by the defendant in error to dismiss the writ, or, if the Court should be of the opinion that the writ should not be dismissed, to affirm the judgment.

Value of the Matter in Controversy.

Among the reasons given in support of the motion to dismiss, the defendant in error has failed to include the lack of jurisdictional value of the subject-matter of the controversy, but he has striven with labored sophistry in the "argument" to create an atmosphere of doubt as to its having any value.

The petition in the record, which is sworn to by the plaintiff in error, shows that the premises in controversy is a hotel, known as the "Harris House," of which the plaintiff in error is lessee for a term ending October 1, 1889, but with the right of extension to October 1, 1893. That he has expended $15,000 in improvements and betterments to the property, and upwards of $20,000 in furniture and appliances for its use as a hotel, upon the faith of his lease, and the expectation of enjoying his full term as tenant. The judgment, which he claims is void for want of jurisdiction, would deprive him of the use and enjoyment of property *for which he has paid* as much as $15,000, exclusive of rent, besides involving him in a loss much over $5,000 upon furniture and appliances. The latter element, probably, could not be considered as entering into the estimate of the value of the matter in dispute.

The defendant in error has carefully overlooked and ignored this indisputable evidence of value, and contents himself with stating that the value of the subject-matter cannot be estimated in money; with citing several authorities, none of which have any aptness or relevancy to this case, and by reasoning that because the justice of the peace *assumed* and *exercised* jurisdiction of the case in which he rendered the judgment claimed to be invalid, the subject-matter could not involve title to land, or a money controversy over $100, or any matter which could ever properly reach this Court. Such an argument is not considered worthy of a serious reply.

The second reason in support of the motion to dismiss, that, "this action is one for the recovery of possession of real property * * * and is not the subject of appeal or writ of error," is an apparent misconception of the nature of this case. This is not a writ of error prosecuted upon a judgment in a cause originating before a justice of the peace, but it is a writ prosecuted upon a judgment of the Supreme Court of the District of Columbia, in a cause in which it exercised original jurisdiction.

The third reason in support of the motion, that by law justices of the peace have exclusive jurisdiction of *this class* of cases, and that an exclusive mode of review by appeal is provided, is also misconceived. It begs the whole question. The ground of the application for *certiorari* in this cause was that the justice of the peace had no jurisdiction of the cause in which he rendered judgment, and that the judgment is void.

Discretion.

The first reason in support of the motion, that the granting or refusing of a writ of *certiorari* is a matter of discretion in the Supreme Court of the District of Columbia, and that it is not the subject of review by this Court is also a misconception of the judgment from which this writ of error is prosecuted.

This is not a judgment refusing the granting of a writ of *certiorari*, but the writ having been allowed, the record of the inferior court having been sent up, and the Supreme Court of the District of Columbia having inspected the record, it is an adjudication that the record does not show want of jurisdiction in the justice of the peace, and that his judgment is valid, and it is a final judgment quashing the writ with costs. The writ had been granted by one of the justices holding a Special Term of the Court, and after the return of the justice of the peace with his record, a motion to quash, based upon the return, was sustained,

and judgment rendered quashing the writ with costs. From this judgment an appeal was taken to the Court in General Term. The Court below did not intimate any doubt of its jurisdiction of the appeal.

In delivering the opinion of the Court (see opinion filed with brief of defendant in error) Mr. Justice Merrick stated the two grounds of objection to the proceedings before the justice of the peace claimed to be indicated upon the face of the record, and disposed of both. Of one he says: "that ground of objection, therefore, the Court thinks is entirely untenable." Of the other, he says: "it is objected * * * that the relation of landlord and tenant did not exist between the parties." * * * "We are to judge as to the question of jurisdiction by the case as made upon the record itself * * * In this case the averments on the record * * * are" (he quotes) "We are of opinion that these averments constitute fully a statement of the relation of landlord and tenant between the parties."

"For those reasons we concur entirely in the decision of the justice at the circuit that the writ of *certiorari* be quashed."

The judgment quashing the writ is a final disposition of the cause, and from it a writ of error lies to this court, under Section 864 of Revised Statutes of the United States, relating to the District of Columbia.

The section of Waits' Actions and Defenses, and the case of *In re* Lantis, 9 Mich., 324, cited by the defendant in error upon this point do not sustain him.

It is respectfully submitted that although the common-law writ of *certiorari* is not a writ of right, and is granted or refused in the discretion of the Court, that such discretion is a legal discretion, and that when the writ has been granted and the record of the inferior court having been sent up, it is examined, and the question of error on the face of the record is heard and determined, that the party aggrieved by the judgment is entitled to its re-examination

by the appellate court. The Court of Appeals of the State of New York, upon this question in a case of *certiorari*, says:

"It is claimed and insisted by the defendant, that how far and in what cases the Supreme Court will exercise this power of review, are questions addressed to the sound discretion of that Court, and as that Court have quashed the writ in this case, their discretion cannot be reviewed in this Court. * * * I cannot assent to the proposition that when the Supreme Court have issued the writ, heard the case upon the return, and have committed a plain error in law and have come to the conclusion erroneously, as in this case, * * * that such judgment is not subject to review in this Court. The judgment of the Supreme Court in such a case is not rendered upon the ground that the proceedings ought not to be reviewed by the writ, or that it was improvidently issued, but upon the ground that the allegations of error have not been sustained in the given case."

The People *vs.* Board of Assessors, 39 N. Y., 88.

This case is cited with approval, and the same doctrine is asserted in—

People *ex rel.* Smith *vs.* Commr's Brooklyn, 103 N. Y., 370.

As to the right of appeal in such a case, the Supreme Court of Illinois says—"Some question was made in argument as to the right to consider this question on appeal, but we presume not seriously, since the right of appeal now exists by statute from all final judgments.

"It is true, the Court below was invested with discretion to some extent, whether to grant or to refuse the writ, but that discretion did not authorize the granting of the writ in a case, where, by law, it clearly ought not to have been granted. The discretion was not an arbitrary one, but one

to be exercised in subordination to legal principles and we may always inquire whether those principles have been adhered to or departed from."

Trustees etc. *vs.* School Directors, 88 Ills., 100.

It is submitted that the defendant in error has not supported his motion to dismiss, by any good or substantial reason, and that it should be overruled.

Upon the motion to affirm, the plaintiff in error submits that under the rules of this Court such motion will not be granted, unless it clearly appears that the writ of error is prosecuted for the mere purpose of delay, and that the questions involved are so frivolous as not to need further argument.

Hinckly *vs.* Morton, 103 U. S., 764.
Micas *vs.* Williams, 104 U. S., 556.
Evans *vs.* Brown, 109 U. S., 580.

The plaintiff in error believes that the judgment of the Court below is erroneous in these two particulars of error which he assigns—

1. That the Court below erred in holding that in the landlord and tenant proceeding the requirement of the statute of a "written complaint on oath * * * to a justice of the peace" was fulfilled.

2. That the Court below erred in holding that the written complaint showed or charged the conventional relation of landlord and tenant between the plaintiff and defendant in that proceeding, and was a sufficient compliance with the requirements of the statute.

He prays, therefore, that the judgment may be reversed.

He says that he has prosecuted this writ of error in good faith for the purpose of having an erroneous judgment reversed; that he has large interests at stake and involved in its event, and that he has evidenced his good faith by giving all the bonds required by the Court below, and un-

questioned security in the sum of $10,000.00 as a supersedeas. The questions of law decided were new to the Court below, and are far from being clear in favor of the defendant in error.

There exists, therefore, no reason why these questions should be determined upon this motion, and he submits that it should be overruled.

Upon the legal questions involved he submits the following brief, first observing that counsel for defendant in error have improperly assumed to claim entirely outside of the record, and with nothing upon which to base it except his bare assertion that these questions had been presented to the Court below and determined in a suit in equity. It is not the fact, and it is not in any way in this case.

Brief on the Questions of Law.

The doctrine that a writ of *certiorari* ought not to be granted in any case in which the party aggrieved is entitled to a remedy by an appeal to a superior jurisdiction, applies only to those cases in which the writ is sought to be used for the correction of *errors* and *irregularities*, and not to those in which the basis of the application is that the inferior tribunal has exceeded it jurisdiction. The same remark may be properly applied to the doctrine of laches in connection with the same subject. If the judgment complained of is void for want of jurisdiction in the tribunal rendering it, no failure or neglect to appeal, and no lapse of time will be of any effect to validate it. As a judgment it is always void, whenever asserted. *Certiorari* is the proper remedy.

People *vs.* Judges, 24 Wend., 253.

This question is disposed of by the Court of Appeals of Maryland as follows:

"Now it is argued that a *certiorari* ought not to issue in any case where a party has a remedy by appeal or writ of

error. We are not prepared to go to this extent. This much, however, we may say, that as it is a matter resting in the legal discretion of the Court the writ ought not to be granted in any case where the party has a right of appeal, except for the purpose of testing the jurisdiction of the Court below."

"Objection to the jurisdiction may no doubt be taken advantage of on appeal, but an appeal brings up the case generally on its merits, and this would in a case like the one before us * * * subject the parties to an expensive and protracted litigation. Whereas by *certiorari* to test merely the jurisdiction * * * the question is one to be decided on the face of the proceedings themselves. In such cases it is a more efficient remedy than by appeal."

Gaither *vs.* Watkins *et al.*, 66 Md., 580.

Does the record returned by the justice *show* that he had jurisdiction of the cause. He is not a Court of record. The jurisdiction in landlord and tenant proceedings is a special statutory jurisdiction, to be exercised only in certain specified cases, and in the specific way directed by statute. There is no presumption in favor of his jurisdiction, and the proceedings must show on their face that the cause of which he assumed jurisdiction is within the statute, and that every step necessary to confer jurisdiction has been duly and regularly taken.

Freeman Judgments, sec. 517, 527.

Evertson *vs.* Sutton, 5 Wend., 285.

The law under which the justice assumed jurisdiction is as follows:

Act of July 4, 1864. 13 Stat., 383.

"An Act to regulate proceedings in cases between landlord and tenants in the District of Columbia."

Be it enacted, &c. That a tenancy at will shall not arise or be created without an express contract or letting to that effect, and that all occupation, possession or holding of any

messuage or real estate without express contract or lease, or by such contract or lease the terms of which have expired, shall be deemed tenancies by sufferance; and all estates at will and sufferance may be determined by a notice in writing to quit of thirty days, * * * no part of this section other than that which relates to the attornment of a tenant to a stranger shall apply to contracts made, or to any tenancy existing prior to the passage of this act, except in cases of waste or refusal to pay rent.

SEC. 2. *And be it further enacted.* That when forcible entry is made, or when peaceable entry is made, and the possession unlawfully held by force, or when the possession is held without right after the estate is determined by the terms of the lease by its own limitation, or by notice to quit, or otherwise, on written complaint on oath of the person entitled to the premises to a justice of the peace, charging a forcible entry or detainer of real estate, as aforesaid, a summons may be issued to a proper officer, commanding the person complained of to appear and show cause why judgment should not be rendered against him, &c.

These two sections, to the extent quoted, are divided between Sections 680 to 684 inclusive, Rev. Stat. U. S., relating to D. C., under chap. 19, "Landlord and Tenant."

This statute was intended to apply only to cases in which the relation of landlord and tenant existed by convention of the parties, express or implied. This is conceded by the opinion of the Court below.

The act constitutes three classes of tenancies by sufferance: 1st, a tenancy without *express* agreement, which before the statute was by implication of law a tenancy at will; 2d, a tenancy without *express* contract, which but for the statute would be, by implied agreement, a tenancy from year to year; and 3d, a tenancy or holding by express contract or lease the term of which has expired. Before the act only the third class of those named was a tenancy of that character. After defining and classifying tenancies at will, and by sufferance, the act provides in the same sentence that they may be terminated by a thirty days' notice

to quit. It is clear that no other tenancy by sufferance is contemplated in the first section. It is claimed, however, that the 2d session of the act covers any case where one holds possession without right after his estate is determined in any manner, by notice to quit, or otherwise. It is clear, however, that except in a case of a forcible entry or forcible detainer, the remedy given is intended to apply to a tenancy determined by the terms of the lease, or by notice to quit, or in any other way adopted by the parties. It was never intended to make the remedy a substitute for the action of ejectment, or that it should apply to the case of the possession by a grantor under a deed of trust where there has been default and sale made. Similar statutes have received the construction contended for in the following cases:

Evertson *vs.* Sutton, 5 Wend., 281.
Roach *vs.* Cosine, 9 *Id.*, 227.
People *vs.* Simpson, 28 N. Y., 55.
Hastings *vs.* Pratt, 8 Cush., 121.
Boyle *vs.* Boyle, 121 Mass., 85.
Reed *vs.* Elwell, 46 Me., 278.
Leavitt *vs.* Wallace, 12 N. H., 489.

If the validity of the proceedings, and the jurisdiction of the justice, are tested solely by the face of the record the judgment and proceedings must be set aside as *coram non judice*. By the return of the justice it appears that a complaint addressed to the justice was made in writing and sworn to before a notary public of Oneida County, State of New York.

There is no authority in the statute for a complaint under oath so made, and it conferred no jurisdiction upon the justice to issue the writ. The language of the act is "on written complaint on oath of the person entitled to the premises to a justice." It contemplates the personal presence of the complainant before the justice, and the admin-

istering of an oath by the justice. He must judge of the propriety and necessity of issuing the writ by having the facts sworn to before him by the party complaining. He is not authorized to take the certificate of any one that the complaint is signed and sworn to by the complainant. The statute does not admit of action by the justice upon an affidavit of the facts being presented to him. Had Congress so intended, appropriate language would have been used. The language used is almost identical with that used in Rev. Stat. D. C., in Sec. 999, giving power to a justice to issue warrants returnable to the Police Court; in Section 1050, giving the judge of the Police Court power to issue process for arrest, and in Section 1064 providing for prosecution by information. No one would impute power to either a justice of the peace or a judge of the Police Court to issue criminal process upon an affidavit made in some other jurisdiction and transmitted to him, and yet either officer would have as much authority and power to issue such process under those circumstances as had the justice of the peace to issue the warrant in this matter.

The complaint is deficient, and fails to show that the cause was within the jurisdiction of the justice in several essential particulars. Instead of stating the facts which show that complainant is entitled to the remedy sought, the complainant states and swears to conclusions of law.

1. The statute provides that the justice may issue summons upon written complaint under oath of the person *entitled to the premises.* The complaint states that Barber is entitled to the *possession.* This is swearing to a conclusion of law, but if a conclusion of law was sufficient, not to the conclusion required. It fails to state whether the complainant is owner in fee or otherwise in what way he is entitled to the possession.

2. The statute provides that the complaint shall charge the forcible entry or detainer "as aforesaid;" that is, that it shall show the estate and tenancy of the defendant, how

created, how determined and in what way the possession is held without right. The complainant swears to a conclusion of law. He says that the defendant is "tenant by the sufferance of the complainant." The statute makes three classes of tenancies by sufferance, and there are various other tenancies or *quasi* tenancies by sufferance created by text writers and courts not mentioned in the statute, and the complaint fails to indicate to which of them the defendant belonged. It was essential that he should state the facts constituting the relation, not his ultimate legal conclusion from the facts, in order that the jurisdiction of the justice should be indicated, for unless the complaint shows the existence of a tenancy by sufferance under the statute, a holding under an agreement, express or implied, the justice of the peace was without jurisdiction. The failure to state the facts is fatal to the proceeding.

Ricketson *vs.* Richardson, 26 Cal., 153.
Forbes *vs.* Hyde, 31 Cal., 353.
Roberts *vs.* Matthews, 38 N. Y., 451.
Hill *vs.* Stocking, 6 Hill, 314.
Sims *vs.* Humphrey, 4 Denio, 185.
Fowler *vs.* Roe, 25 N. J. L., 549.
Shepherd *vs.* Sliker, 31 *Id.*, 432.
McGinniss *vs.* Vernon, 67 Pa., 144.
McDermott *vs.* McIlwain, 75 *Id.*, 341.
Evans *vs.* Muller, 25 Mo., 195.

A. C. BRADLEY,
Counsel for Plaintiff in Error.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1894.

JOHN H. HARRIS, Plaintiff in Error,

vs.

AMAZIAH D. BARBER, Defendant in Error.

No. 1,483.

BRIEF

On Behalf of Defendants in Error on Motion to Dismiss.

created, how determined and in what way the possession is held without right. The complainant swears to a conclusion of law. He says that the defendant is "a tenant by the sufferance of the complainant". The statute makes three classes of tenancies by sufferance, and there are various other tenancies or *quasi* tenancies by sufferance created by text writers and courts not mentioned in the statute, and the complaint fails to indicate to which of them the defendant belonged. It was essential that he should state the facts constituting the relation, not his ultimate legal conclusion from the facts, in order that the jurisdiction of the justice should be indicated, for unless the complaint shows the existence of a tenancy by sufferance under the statute, a holding under an agreement, express or implied, the justice of the peace was without jurisdiction. The failure to state the facts is fatal to the proceeding.

Rickerson *vs.* Richardson, 26 Cal., 153.
Forbes *vs.* Hyde, 31 Cal., 353.
Roberts *vs.* Matthews, 38 N. Y., 451.
Hill *vs.* Stocking, 6 Hill, 314.
Sims *vs.* Humphrey, 4 Denio, 185.
Fowler *vs.* Roe, 25 N. J. L., 549.
Shepherd *vs.* Sliker, 31 *Id.*, 132.
McGinniss *vs.* Vernon, 67 Pa., 141.
McDermott *vs.* McIlwain, 75 *Id.*, 341.
Evans *vs.* Muller, 25 Mo., 195.

A. C. Bradley,
Counsel for Plaintiff in Error.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1888.

JOHN H. HARRIS, Plaintiff in Error,

vs.

AMAZIAH D. BARBER, Defendant in Error.

No. 1,443.

BRIEF

On Behalf of Defendant in Error on Motion to Dismiss.

JAMES S. EDWARDS,
JOB BARNARD,
Attorneys for Defendant in Error.

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IN THE

Supreme Court of the United States,

OCTOBER TERM, 1888.

JOHN H. HARRIS, *Plaintiff in Error*,
vs.
AMAZIAH D. BARBER, *Defendant in Error.* } No. 1,443.

BRIEF

On Behalf of Defendant in Error on Motion to Dismiss.

Statement.

July 31, 1886, the defendant in error, Amaziah D. Barber, a resident of Utica, New York, filed his complaint before a justice of the peace of the District of Columbia, against John H. Harris, wherein he claimed judgment for possession of the hotel and premises known as the "Harris House," on E Street between Thirteenth and Fourteenth Streets, Washington City, under the provisions of the landlord and tenant law of said District (p. 2). A summons was issued and served on said Harris (p. 4), who appeared before the justice (p. 5), and trial was commenced on August 12th, and, on defendant's motion, said suit was continued until August 14th, when the trial was concluded and judgment rendered for plaintiff for possession and costs.

No appeal being taken, or other proceedings to review the

judgment, on November 22, 1886, a writ of restitution was issued. (P. 5.)

Thereupon an effort was made on the equity side of the Supreme Court of said District (p. 6), to enjoin the execution of said judgment. That remedy being denied by said Court, Harris filed his petition on the law side of said Court, December 19, 1887 (p. 1), for a writ of *certiorari*, to be directed to said justice of the peace, to require him to send up the case, to the end that the said Court might inquire into the alleged invalidity of said judgment. This writ was allowed, *ex parte* (p. 2), and the record and proceedings were sent to said Court, where a motion was made by Barber to quash said writ (p. 6). This motion was argued, and Justice Cox, who had granted the writ *ex parte*, entered a judgment quashing it, and directing papers to be returned to the justice (6, 7). From this judgment, or denial of the writ, Harris appealed to the Court in General Term (p. 7), where the appeal was argued before Chief Justice Bingham, and Justices James and Merrick, and a judgment entered affirming the order of Justice Cox (p. 10). From this last refusal of said court to grant the issuance of said writ, Harris prayed a writ of error, and now by such writ brings the record to this Court.

The opinion of said Court in General Term, was delivered orally by Justice Merrick, but the same was reported and it is copied herein, as follows:

Opinion of the Court,

Announced Monday, November 5, 1885, by Mr. Justice Merrick.

"In this case there was a petition for a writ of *certiorari* to the justice to require him to send up the proceedings in a landlord and tenant case. The original application to the justice was made and the warrant was issued on the 31st of July, 1886. Judgment for possession was rendered August 14, 1886, and a writ of restitution was issued on the 27th of November, 1886, and the petition for the writ of *certiorari* was filed on the 19th day of December, 1887. The peti-

tion sets forth, as its ground of complaint, that the written complaint, under oath, was not made to or before the said justice of the peace, as is required by law; and that the applicant for the writ did not appear before the said justice to make such application, but made an affidavit before a notary public in the State of New York, and that upon said affidavit the justice assumed to act, and caused the summons to issue, and proceeded with the case to judgment.

"The second ground of objection is that the relation of landlord and tenant did not exist between the applicant for the writ and the petitioner.

"The Court does not think that a hypercritical construction should be given to the statute; that it is abundantly sufficient if the complaint under oath be presented to the justice and acted upon, but that the oath itself need not be made before the justice who issued the writ. There is nothing in the policy of the law; there is no good, so far as the Court can see, to be accomplished by such a strict construction of the rule as to require that an affidavit, which is the foundation of the proceeding, shall be made in proper person before the identical justice who issues the summons. All the purposes of the law are gratified by having the complaint avouched by a sworn statement of the grievance of which the party complains, and this is as good and efficacious, and as completelely competent to accomplish the object of repressing vexatious litigation, if the oath is made before and duly certified by any officer competent to administer an oath, as if made before the identical justce. That ground of objection, therefore, the Court thinks is entirely untenable. The oath may be as well made before a party competent to make the oath in one place as in another, and the justice could as well conduct the proceedings thereupon in due order as if the oath had been made before himself.

"It is objected, in the second place, that the relation of landlord and tenant did not exist between the parties.

"The petition before the justice sets forth the relation of

landlord and tenant, and that the justice assumed jurisdiction and acted upon the case as made. Now, what may have occurred in proof we do not and cannot know upon the application for a *certiorari*. We are to judge as to the question of jurisdiction by the case as made upon the record itself. In other words, in all cases where there is an objection made on the ground of jurisdiction, we must, as the Supreme Court has said, test it by inquiring whether a demurrer would lie to the proceedings as stated in the papers upon the record. In this case the averments on the record; that is to say, the complaint, which is the only record in the case—are, that the complainant 'represents that he is entitled to the possession of certain tenements, describing them, and that they are detained and withheld from him without right by the defendant, tenant thereof by sufferance of this complainant, and whose tenancy and estate therein has been determined by the service of a due notice to quit of thirty days, in writing.'

"We are of opinion that these averments constitute fully a statement of the relation of landlord and tenant between the parties. Now, whether the proof came up to these avements or not, cannot be inquired into upon a writ of *certiorari*. *Certiorari* goes only to the jurisdiction. It does not go to any errors of judgment that may have been committed by the justice in the progress of the exercise of that jurisdiction. In other words, it does not fulfill the function of an appeal for erroneous judgment upon facts as applied to the jurisdictional question; and we cannot inquire, upon a writ of *certiorari* issued twelve months after the writ of restitution had been issued, whether or not there was sufficient evidence before the justice to authorize him to pass judgment in a case where all the jurisdictional facts were fully gratified upon the record.

"For these reasons we concur entirely in the decision of the justice at the Circuit that the writ of *certiorari* be quashed."

The defendant in error has procured the said record to be printed, and has filed a motion to dismiss the said writ of error, or to affirm the said judgment of said Supreme Court, under Rule 6, of this Court.

Said motion is as follows:

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1888.

JOHN H. HARRIS, *Plaintiff in Error.*
vs.
AMAZIAH D. BARBER, *Defendant in Error.* } No. 1,443.

Motion by Defendant in Error to Dismiss or Affirm.

Now comes Amaziah D. Barber, the defendant in error in this action, by Edwards & Barnard, his attorneys, and moves the Court to dismiss the writ of error herein, and to remand this cause to the Supreme Court of the District of Columbia for the following reasons apparent on the face of the record:

1. The granting or refusing of a writ of *certiorari* to a justice of the peace of said District is a matter resting wholly in the discretion of the Supreme Court of the District of Columbia, whose decision is final; and it is not the subject of review by this Court.

2. This action is one for the recovery of possession of real property by a landlord from his tenant, and is not the subject of appeal or writ of error under the Act of Congress of March 3, 1885. (23 Statutes at Large, p. 443.)

3. The Act of Congress of July 4, 1864 (13 Statutes at Large, 383; R. S. D. C., sec. 680, *et seq.*), gives justices of the peace in said District exclusive jurisdiction of this class of cases, and provides an exclusive mode of review of their decisions by an appeal.

The said defendant in error further moves the Court that if for any reason the Court should be of opinion that said writ of error should not be dismissed, that then the said judgment of the Supreme Court of the District of Columbia herein be forthwith affirmed, for the reason that it is apparent from the record that the contention of the plaintiff in error is without merit, and that this proceeding by way of *certiorari*, appeal and writ of error was begun and prosecuted for the purpose of delay only.

JAMES S. EDWARDS,
JOB BARNARD,
Attorneys for Amaziah D. Barber,
Defendant in Error.

ARGUMENT.

This is a proceeding originating in the Supreme Court of the District of Columbia by the filing of the petition for the writ of *certiorari*, the granting or refusing of which is a matter resting wholly in the discretion of that Court in the exercise of its common-law jurisdiction derived from Maryland. This does not involve the validity of any statute of the United States, or any subject matter which can be in any way estimated in money, so as to say that over $5,000 is in dispute.

DeKrafft *vs.* Barney, 2 Black, 704.

If it could be regarded otherwise and considered that the suit before the justice of the peace was the suit in which the amount in controversy would determine jurisdiction, that would not help the plaintiff in error.

That suit does not involve title to land, for that could not be tried by a justice of the peace.

Sec. 687, R. S. D. C.

It cannot be said to involve a money controversy, for a justice has no jurisdiction beyond $100.

Sec. 997, R. S. D. C.

It only involves the right of possession of certain premises, the possession of which may or may not be of money value to either party.

Elgin *vs.* Marshall, 106 U. S., 578.

It is the right of actual and physical possession which was the subject of dispute. It is, however, utterly impossible for that case to come into this Court, as it was a special proceeding, under a special act of Congress, and which act makes no provision for the review by this Court of any judgment pronounced thereunder.

Secs. 677 to 691, R. S. D. C.

The rental value of the property in question, cannot be considered as in dispute; for if the plaintiff succeeded in that action in getting possession, the defendant would have to pay the rental value for "use and occupation;" and if the defendant prevailed, he would still have to pay the same as rent under the lease.

The authorities are reviewed by Justice Gray, in Kurtz *vs.* Moffitt, 115 U. S., 487, relating to jurisdiction by reason of amount in dispute.

We submit that under the 1st section of the Act of March 3, 1885 (23 Stat. at L., 443), no jurisdiction can be found for this Court to entertain this writ of error.

We also submit that the case in no way questions the validity of any act of Congress, and cannot be considered as belonging to the class of cases referred to in the 2d section of said act. At most, the whole case made by the plaintiff in error, in his petition for the writ of *certiorari*, only raises a question of practice under the landlord and tenant law, and does not in any way attack the validity of that law.

The allowance of a writ of *certiorari* is a matter of discretion, and for that reason the order of the Court quashing the writ is not a final judgment into which this Court can inquire; and on that ground the writ of error should be dismissed.

2 Wait's Actions & Def., 135.
In re Lantis, 9 Mich., 324.

Should it appear to this Court, however, that it has jurisdiction to try such disputes between landlords and tenants in this District, or to compel by the writ of *certiorari*, the Supreme Court of the District, to try the same, we then submit that this is not the case in which that jurisdiction ought to be exercised. To delay the matter for a hearing on the merits by oral argument, for three or four years, until the case would be reached in its regular call on the docket, would be a great hardship to the defendant in error.

The merits of the action before the justice of the peace, are not involved in the motion to quash the writ of *certiorari*, (which would be the only matter before this Court if jurisdiction were entertained).

Maybee *vs.* Miner, 44 Mich., 207.

But if such merits could be inquired into here, it would appear that the plaintiff in error had no valid defense which he could have made, either before the justice, or on appeal. Mr. Barber purchased the property in question in good faith under a deed of trust, existing and duly recorded long before Harris leased the same, and subject to which he took his lease. Harris still remaining in possession after said sale, became, by operation of law, tenant of the purchaser by sufferance, and was liable to have said tenancy terminated by a thirty day's notice to quit, which was done.

Luchs *vs.* Jones, 1 Mac A., 345.
Kinsley *vs.* Ames, 2 Met., 29.
Howard *vs.* Merriam, 5 Cush., 576.

Keech *vs.* Hall, 1 Doug. (K. B.), 21.
Woods' Land & Ten., 185, 190, 191.
Taylor's Land & Ten., 14, 46, 47. Notes.

Besides, the merits had been inquired into by the justice of the peace, on the trial, and they were familiar to the Supreme Court of the District of Columbia, by reason of the equity suit, wherein the validity of said judgment had been attacked.

The report of this case in equity (No. 10,046) will be found in 15 Wash. Law Rep., 881.

If these merits had been improperly determined, Harris should have corrected the decision by an appeal, for in this case no question can arise as to the jurisdiction, as that is expressly conferred by the statute (R. S. D. C., sec. 684–689); and whether the judgment of the justice of the peace is erroneous or not, cannot be questioned on an application for writ of *certiorari*. His jurisdiction of the parties and the subject-matter being shown, the correctness of his judgment can only be inquired into on appeal.

2 Wait's Act. and Def., 139.
Owens *vs.* State, 27 Wis., 456.
People *vs.* Van Alstyne, 32 Barb., 131.
People *vs.* Betts, 55 N. Y., 600.
People *vs.* Co. Judge, 40 Cal., 479.

Certiorari, at the common law, will only lie to inferior jurisdictions in cases where they proceed illegally, and where no appeal or other mode of directly reviewing their proceedings is provided by law.

Farrell *vs.* Taylor, 12 Mich., 113.
Ennis *vs.* Ennis, 110 Ill., 78, 82.
Miller *vs.* Trustees, 88 Ill., 26.
Witkowski *vs.* Skalowski, 46 Ga., 41.
Sturgis *vs.* Shepard, 28 Cal., 115.

The object of the writ is to provide a remedy whereby the justice of the peace, or other tribunal of limited powers, may be confined within statutory jurisdictional limits; and every presumption will obtain in favor of sustaining the jurisdiction which is exercised by such tribunal.

Baizer *vs.* Lasch, 28 Wis., 268.
2 Wait's Act. and Def., 139.
Williamson *vs.* Carnan, 1 G. & J., 196.
C. & R. I. R. R. Co. *vs.* Fell, 22 Ill., 333.
Charter Oak L. Ins. Co. *vs.* Talmadge, 3 Mac A., 422.

Where an appeal is provided by law, questions of jurisdiction can be raised on the appeal; and where the questions are of such character as to be so raised and reviewed, although going to the jurisdiction, a writ of *certiorari* will not lie.

Farrell *vs.* Taylor, 12 Mich., 113.

There is another matter that shows the judgment of the Lower Court to be correct, and that is, the unexcused *laches* of the plaintiff in error. This discretionary writ of *certiorari* should only be given by courts in aid of a meritorious cause, and to one who has been diligent in availing himself of the proper means of defense given by the law.

Negligence and laches of the petitioner in defending his suit, or in taking an appeal, or in applying for the writ, will debar him from this remedy where otherwise it might have been granted him.

Dye *vs.* Noel, 85 Ill., 290.
Trustees *vs.* Directors, 88 Ill., 100.
2 Wait's Act. and Def., 138.
Erwin *vs.* Erwin, 3 Dev. (N. C.), Law, 528.
In Re Lantis, 9 Mich., 324.

It is a matter of common knowledge, that a tenant in possession will avail himself of all the means for delaying

the service of a writ of restitution within the power of his counsel to devise or construct; and it is only a fair inference from this record, that the whole and only object of this writ of error is the delay that inevitably follows, if the case is entertained by this Court and heard in its order on the over crowded docket.

For these reasons, if by any chance the Court may conclude that it has jurisdiction, we ask that the judgment quashing the writ may be forthwith affirmed, with costs.

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